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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JERMAINE D. DOSS,

10 Plaintiff,

11 v.

12 JANSSEN PHARMACEUTICAL, INC., and
13 JOHNSON & JOHNSON CORPORATION,

14 Defendants.

CASE NO. C18-1314 RSM

ORDER ON PENDING MOTIONS

15 This matter is before the Court on Plaintiff's Motion to Appoint Counsel (Dkt. #19) and
16 Motion to Amend and for Service (Dkt. #21). Plaintiff files this action pro se and has been
17 previously granted leave to proceed *in forma pauperis* in this matter. Dkt. #7. Summonses have
18 not been issued.

19 Plaintiff first filed this action in the United States District Court for the District of New
20 Mexico while incarcerated in New Mexico. Dkts. #1 and #15. Finding that the Plaintiff had
21 been released from custody and was located within this District, the Honorable Judge Martha
22 Vazquez, of the District of New Mexico, transferred this case *sua sponte* pursuant to 28 U.S.C.
23 § 1404. In the action, Plaintiff asserts product liability claims related to Risperdal, which is
24 manufactured and distributed by Janssen Pharmaceutical, Inc., a subsidiary of Johnson &
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1 Johnson Corp. *Id.* at 1. Plaintiff alleges that he has developed gynecomastia and suffered mental
2 distress, humiliation, grief, fright, shock, or indignity as a result of taking the drug. *Id.*

3 Plaintiff's Motion to Appoint Counsel seeks to have the Court consider a motion to
4 appoint counsel (Dkt. #10) that was filed in the District of New Mexico prior to the case being
5 transferred. Dkt. #19. Review of the docket reveals that consideration of that motion was
6 deferred to this Court.¹ Dkt. #15. Plaintiff's Motion to Appoint Counsel is premised primarily
7 on his concerns that his mental state will not permit him to represent himself. Dkts. #10 and #19.
8 Plaintiff's Motion to Amend and for Service seeks to add an additional defendant, Patriot
9 Pharmaceuticals, LLC, a subsidiary of Janssen Pharmaceutical, Inc. Dkt. #21. Plaintiff also
10 appears to request that the Court determine he is "authorized to proceed *in forma pauperis*"² and
11 to order service on his behalf. *Id.*

13 **A. Appointment of Counsel**

14 In civil cases, the appointment of counsel to a *pro se* litigant "is a privilege and not a
15 right." *United States ex. Rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965) (citation
16 omitted). "Appointment of counsel should be allowed only in exceptional cases." *Id.* (citing
17 *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963)). A court must consider together "both the
18 likelihood of success on the merits and the ability of the petitioner to articulate his claims *pro se*
19 in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952, 954
20 (9th Cir. 1983). In "exceptional circumstances," a district court may appoint counsel for indigent
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24 ¹ It appears that the Motion was not noted for consideration before this Court upon the case being
25 transferred.

26 ² It appears to the Court that Plaintiff was already granted leave to proceed *in forma pauperis* in
this action, though he was required to make partial payments to the United States District Court
for the District of New Mexico. Dkt. #7.

1 civil litigants. 28 U.S.C. § 1915(e)(1); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997),
2 *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

3 The Court does not find this to be an exceptional case warranting the appointment of
4 counsel. Plaintiff's Complaint is sparse, is somewhat unclear as to the specific claims he is
5 asserting, and does not address issues of causation in any substantial way. While it may be
6 difficult for Plaintiff to articulate his claims, he appears to be capable of doing so as demonstrated
7 by his numerous filings and past actions before this Court. *See Doss v. Hayes et al.*, C16-1618
8 (W.D. Wash. 2016) and *Doss v. Heyman, et al.*, C16-1695TSZ (W.D. Wash. 2016). Plaintiff's
9 request is therefore denied.
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11 **B. Leave to Amend**

12 Plaintiff does not need the Court's permission to file an amended complaint prior to
13 serving his lawsuit. Federal Rule of Civil Procedure 15(a)(1) provides that "[a] party may amend
14 its pleading once as a matter of course within: (A) 21 days after serving it." Plaintiff may
15 accordingly file an amended complaint.
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17 **C. Service**

18 Federal Rule of Civil Procedure 4(c)(3) provides:

19 At the plaintiff's request, the court may order that service be made by a United
20 States marshal or deputy marshal or by a person specially appointed by the court.
21 The court must so order if the plaintiff is authorized to proceed *in forma pauperis*
under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

22 This Rule requires the Court to order service by the Marshal when requested by a plaintiff
23 proceeding *in forma pauperis*. 28 U.S.C. § 1915(c); *Boudette v. Barnette*, 923 F.2d 754, 757
24 (9th Cir. 1991) ("An IFP plaintiff must request that the marshal serve his complaint before the
25 marshal will be responsible for such service."). However, Plaintiff bears the burden of providing
26 accurate and sufficient information to effect service of the Summons and Complaint. *See Walker*

1 v. v. *Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994), *overruled on other grounds by Sandin v.*
2 *Conner*, 515 U.S. 472 (1995). Plaintiff has not provided the Court with information indicating
3 where the Marshal is to properly serve Defendant. Further, Plaintiff has indicated that he desires
4 to amend his complaint. Therefore, the Court declines to direct service at this time. Plaintiff
5 may request service again after filing his amended complaint or may file another request
6 indicating that he does not plan to amend his complaint.

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8 Accordingly, and having considered Plaintiff's Motions, reviewing the record, and for
9 the reasons stated above, the Court hereby finds and ORDERS:

- 10 1. Plaintiff's Motions to Appoint Counsel (Dkts. #10 and #19) are DENIED.
- 11 2. Plaintiff's Motion to Amend and for Service (Dkt. #21) is DENIED AS MOOT as to
12 leave to amend and is DENIED as to an order for service.
- 13 3. The Clerk shall send a copy of this Order to Plaintiff at 6018 187th Pl. S.W., Lynnwood,
14 WA 98037.

15 Dated this 6 day of November 2018.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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